

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**ANTHONY HAPPEL,**  
**Plaintiff,**

**V.**

**MARK BISHOP, et al.,  
Defendants.**

**C.A. No. 23-13 Erie**

**District Judge Susan Paradise Baxter**  
**Chief Magistrate Judge Richard Lanzillo**

## MEMORANDUM ORDER

Plaintiff Anthony Happel, an inmate formerly incarcerated at the Venango County Prison in Franklin, Pennsylvania (“VCP”),<sup>1</sup> initiated this civil rights action on December 5, 2022, by filing a *pro se* complaint in the Court of Common Pleas of Erie County, Pennsylvania. The action was subsequently removed to this Court by Notice of Removal filed on January 19, 2023. The case was referred to Chief United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

After a series of motions to dismiss, Plaintiff ultimately filed a second amended complaint [ECF No. 48], which is the operative pleading in this case. Named as Defendants in the second amended complaint are Mark Bishop (“Bishop”), the former warden at VCP; Major Smith (“Smith”), the current warden at VCP; Angela Trowbridge (“Trowbridge”), the nurse in charge of “intakes and medical treatment programs for inmates” at VCP; Venango County; VCP; and UPMC, a private hospital under contract to provide medical services to inmates at VCP.

Plaintiff alleges that Defendants violated his rights under the fourteenth amendment to the

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Plaintiff is currently incarcerated at the State Correctional Institution at Forest in Marienville, Pennsylvania.

United States Constitution, the Americans with Disabilities Act (“ADA”), and the rehabilitation Act (“RA”), by failing to provide appropriate treatment for his opioid addiction withdrawal symptoms and, in the case of governmental and individual policymaking Defendants, by adopting policies that precluded such treatment.

Defendants Trowbridge and UPMC each filed a motion to dismiss the second amended complaint pursuant to Fed.R.Civ.P. 12(b)(6) [ECF Nos. 49 and 53, respectively], and Defendants Bishop, Smith, and VCP (hereinafter collectively referred to as “VCP Defendants”) filed a motion to dismiss and, alternatively, a motion for summary judgment [ECF No. 55]. All motions were fully briefed by the parties.

On February 22, 2024, Chief Magistrate Judge Lanzillo issued a Magistrate Judge’s Report and Recommendation (“R&R”) recommending that each of the motions be granted in part and denied in part [ECF No. 92]. In particular, Judge Lanzillo recommends that: (1) the motions to dismiss filed by Defendants Trowbridge [ECF No. 49] and UPMC [ECF No. 53] be granted as to Plaintiff’s ADA and RA claims and that such claims be dismissed with prejudice, but that the motions should be denied as to Plaintiff’s Fourteenth Amendment medical indifference claims against said Defendants; (2) the VCP Defendants’ motion to dismiss [ECF No. 55] should be granted as to all claims against Defendants Smith and VCP, and as to Plaintiff’s ADA claim against Defendant Bishop; (3) the VCP Defendants’ motion to dismiss should be denied as to all claims against Defendant Venango County and as to Plaintiff’s Fourteenth Amendment medical indifference claim against Defendant Bishop; and (4) the VCP Defendants’ alternative motion for summary judgment [ECF No. 55] should be dismissed, without prejudice. No timely objections to the R&R have been filed.

Thus, after *de novo* review of the complaint and documents in the case, together with the report and recommendation, the following order is entered:


AND NOW, this 8th day of March, 2024,

IT IS HEREBY ORDERED that the motions to dismiss filed by Defendant Trowbridge [ECF No. 49], Defendant UPMC [ECF No. 53], and the VCP Defendants' motion to dismiss [ECF No. 55] are GRANTED IN PART and DENIED IN PART, as follows:

- (1) The motions to dismiss filed by Defendants Trowbridge and UPMC are GRANTED as to Plaintiff's ADA and RA claims against said Defendants, and such claims are DISMISSED with prejudice;
- (2) The motions to dismiss filed by Trowbridge and UPMC are DENIED as to Plaintiff's Fourteenth Amendment medical indifference claims against said Defendants, and such claims will be allowed to proceed beyond the pleading stage;
- (3) The VCP Defendants' motion to dismiss is GRANTED as to all of Plaintiff's claims against Defendants Smith and VCP and as to Plaintiff's ADA claim against Defendant Bishop, and all such claims are DISMISSED with prejudice ; and
- (4) The VCP Defendants' motion to dismiss is DENIED as to all of Plaintiff's claims against Defendant Venango County and as to Plaintiff's Fourteenth Amendment medical indifference claim against Defendant Bishop. Such claims will be allowed to proceed beyond the pleading stage.

IT IS FURTHER ORDERED that the VCP Defendants' alternative motion for summary judgment [ECF No. 55] is DENIED, without prejudice to the VCP Defendants' right to renew said motion after Plaintiff has the opportunity to conduct discovery with regard to the matters identified in his Rule 56(d) affidavit [ECF No. 90-1]. The report and recommendation of Chief Magistrate Judge Lanzillo, issued February 22, 2024 [ECF No. 92], is adopted as the opinion of the court.

Based on the foregoing, the Clerk is directed to terminate Defendants Smith and Venango County Prison from this case.

  
SUSAN PARADISE BAXTER  
United States District Judge

cc: The Honorable Richard A. Lanzillo  
Chief U.S. Magistrate Judge